the Sale and Purchase Agreement. This is proved by the fact that a copy of the Agreement (TSC 1 at page 100 of the Record) was produced as an exhibit attached to Mr. Tan Siew Chin's affidavits. It is thus clear that at the time of the loan and charge transactions the appellant not only knew that the land to be charged for the loan was parcelled into several housing lots and sold to various purchasers, but it also had knowledge of the contents of the Sale and Purchase Agreement itself, although it might not know the purchasers personally or individually. However, even the terms of the loan was that its repayment was to come "from the proceeds of sale of the houses built". This term clearly shows that the appellant's decision to grant the loan was based on its assessment of the economic and commercial viability of the respondent's housing estate and its expectation of making gains from the proceeds of sale to the purchasers. Having supplied the capital in the form of loan with a sure expectation of profit in the form of interest, in essence the appellant could very well be likened to being in partnership with the respondent, although as a matter of law this transaction was kept only as a simple loan secured by the charge.

Now, that the respondent has failed to pay the interest and is unable to repay the capital, should the appellant be allowed to pull out from the deal, leaving innocent purchasers in the lurch? Should the appellant be allowed to pursue its narrow interest in the preservation of its loan and interest due on it when it was in a way a willing party to the project by lending the money to the respondent, regardless of its social and moral responsibilities and the purchasers' equities? We have no doubt that these purchasers have acquired equities and could specifically enforce their Sale and Purchase Agreement against the respondent, but for the charge which they were naive enough to authorize the respondent to create. In our view, the appellant should have foreseen this event – i.e. the inabilities of the respondent to honour its bargain – at the time when it decided to give the bridging loan. However, moved by its business consideration of the possibility and probability of making a good return from its investment by way of interest it decided to give the loan. In our view, if the appellant wants to be cautious, it should be cautious at that time, and not now, after the event.

It is in order to enable the court to do justice in situations such as this that the legislature thought fit to enact subsection (3) of section 256 of the National Land Code in that no order of sale would be allowed if the court is satisfied with the existence of "a cause to the contrary". We think that the default of the appellant to release the loan alone would be sufficient to dismiss its appeal, but when it is coupled with the equity of the purchasers and the appellant's own unreasonable conduct and attitude, we have no hesitation to dismiss this appeal altogether.

In its notice and petition of appeal, the appellant also appealed against the order of the learned judge to allow the interveners to be parties to the proceedings. But its counsel did not address us on the propriety or correctness of the learned judge's ruling on this point. We therefore take it that the appellant abandoned that issue.

In conclusion, we hold that the appeal is dismissed with costs, and that the deposit should be paid to the respondent on account of the taxed costs.

Appeal dismissed.

Solicitors: *Mah-Kok & Din; Almeida & Co.; Asbir & Hira Singh; S.A. Lingam & Co.*

PEMUNGUT HASIL TANAH, DAERAH BARAT DAYA (BALIK PULAU), PULAU PINANG v. KAM GIN PAIK & ORS.

[F.C. (Abdul Hamid, Mohamed Azmi & Hashim Yeop A. Sani F.JJ.) July 18 & September 7, 1983]

[Ipoh – Federal Court Civil Appeal No. 115 of 1983]

Land Law – Land Acquisition – Application to quash award of Collector – Allegation that owners were not given opportunity to be heard – Long delay between issue of notice and making of award – Abuse of power – Award of Collector quashed – No jurisdiction to quash notice of acquisition or to order possession of land to be returned to owners – Government Proceedings Ordinance, 1956, s. 29(1)(b) – Land Acquisition Act, 1960, ss. 10, 12 & 68.

Administrative Law – Certiorari – Application to quash award of Collector of Land Revenue in land acquisition proceedings – Long delay between notice of acquisition and making of award – Government Proceedings Ordinance, 1956, s. 29(1)(b) – Land Acquisition Act, 1960, ss. 10, 12 & 68.

In this case the respondents had applied for an order of certiorari to quash the award made by the appellant in

respect of lands belonging to them. The two main grounds in support of the application were (a) that the respondents, the owners of the land were not given an opportunity to be heard during the enquiry before the Collector and (b) the delay of eight years between the publication of the gazette notification and the making of the award was long, inordinate and grossly unreasonable. The learned judge of the High Court held that there was a denial of natural justice in this case and that in the absence of reasonable explaination for the delay of eight years, the delay tantamounts to an abuse of power which rendered the enquiry and all subsequent proceedings null and void. The learned judge ordered the award and subsequent proceedings to be quashed. He went further and held that G.N. 89 dated March 30, 1972 in respect of the land and all subsequent proceedings be removed and quashed. In addition he made a direction to the Collector to deliver back possession of the land to the owners. The appellant appealed. The grounds of appeal were to the effect –

(1) That the allegation of denial of natural justice to the owners of the land in the enquiry before the Collector is without basis. The finding of the learned judge in the Originating Motion to the effect that the owners of the land were denied natural justice was therefore wrong.

(2) Since the subject of the application for certiorari in the Originating Motion was the Collector's award dated February 7, 1980 section 68 of the Land Acquisition Act 1960 would disbar any proceeding against the acquisition and the judge has no power to go into the validity of the whole acquisition proceeding and in particular to quash GN 89 dated 30/3/1972.

(3) That the finding of the judge that the delay of eight years tantamounts to an abuse of power was wrong.

(4) That the order made by the judge directing the Collector to deliver possession of the lands to the owners was contrary to section 29 of the Government Proceedings Ordinance, 1956.

Held: (1) there was no breach of the rules of natural justice in the enquiry before the Collector and therefore the allegation of denial of natural justice before the Collector is without basis;

(2) section 68 of the Land Acquisition Act does not bar the application for certiorari;

(3) the learned judge was perfectly entitled and within his powers to order as he did that because of the long delay the award and subsequent proceedings be quashed;

(4) the order of the learned judge to quash G.N. 89 dated 30/3/1972 was made without jurisdiction and should be set aside;

(5) the order of the learned judge directing the Collector to deliver possession of the land in question is contrary to the express provisions of section 29(1)(b) of the Government Proceedings Ordinance, 1956, and should be set aside.

Cases Referred to:

(1) *Pemungut Hasil Tanah, Daerah Barat Daya Pulau Pinang* v. *Ong Gaik Kee* [1983] 2 M.L.J. 35.

(2) *Chief Building Surveyor* v. *Mahkanlall & Co. Ltd.* [1969] 2 M.L.J. 118.

(3) *D.C. Mills Ltd.* v. *Commissioner of Income Tax* A.I.R. 1955 S.C. 65.

(4) *Chanan Kaur & Others* v. *Chua Hup Lee & Ors.* [1983] 1 M.L.J. 217.

(5) *Radhey Sham* v. *State of Haryana* A.I.R. 1982 P. & H. 519.

(6) *Underhill & Anor.* v. *Ministry of Food* [1950] 1 All E.R. 591.

(7) *Ramamoorthy* v. *Menteri Besar, Selangor & Anor.* [1971] 1 M.L.J. 187.

(8) *Dyson* v. *Attorney-General* [1911] 1 K.B. 410, 421.

FEDERAL COURT.

Saari bin Yusof (Legal Adviser, Penang) for the appellant.

Karpal Singh (*Balwant Singh Purba* with him) for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani F.J. (delivering the Judgment of the Court): This is an appeal against the judgment of the High Court Penang in Originating Motion No. 16 of 1980. The learned judge made the following orders:–

(1) GN 89 dated March 30, 1972 in respect of the applicants' lands together with all subsequent proceedings including the enquiry before the Collector and the award of the Collector and all subsequent proceedings be quashed;

(2) Any acquisition or taking into possession of the applicants' lands by the Collector be declared null and void and that the Registrar of Land Titles Penang to do everything necessary to expunge such entry or entries from the Interim Register of Titles or Document of Titles;

(3) That the Collector do deliver possession of the lands back to the owners.

There are many grounds of appeal but considered collectively the grounds are fourfold.

(1) That the allegation of denial of natural justice to the owners of the land in the enquiry before the Collector is without basis. The finding of the learned judge in the Originating Motion to the effect that the owners of the land were denied natural justice was therefore wrong.

(2) Since the subject of the application for certiorari in the Originating Motion was the Collector's award dated February 7, 1980 section 68

of the Land Acquisition Act 1960 would disbar any proceeding against the acquisition and the judge has no power to go into the validity of the whole acquisition proceedings and in particular to quash GN 89 dated March 30, 1972.

(3) That the finding of the judge that the delay of eight years tantamounts to an abuse of power was wrong.

(4) That the order made by the judge directing the Collector to deliver possession of the Lands to the owners was contrary to section 29 of the Government Proceedings Ordinance, 1956.

It can be seen from the grounds of this appeal that this appeal is distinguishable from *Pemungut Hasil Tanah; Daerah Barat Daya, Pulau Pinang* v. *Ong Gaik Kee*[1] dealt with by this court where this court held *inter alia* that long delay between the Gazette Notification and finalisation of the enquiry tantamounted to an abuse of power and rendered the enquiry and subsequent proceedings null and void.

To get our perspective right it will be necessary to refer first to the background facts of this case. On an application *ex-parte* on August 16, 1980 leave was granted by the High Court Penang to the owners of the lands to apply for an order of certiorari to remove into the court and to quash the award made by the Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang (hereinafter referred to as "the Collector") made on February 7, 1980 in respect of the lands. Pursuant to the leave a Notice of Motion was taken out on October 27, 1980. It did not ask for any other declaration. This Motion came to be heard on January 23, 1981. There were a number of adjournments at the request of one or the other of the parties. The Motion was finally heard by the learned judge on August 13, 1982 which again was adjourned pending the decision of the Federal Court in *Ong Gaik Kee's* case, *supra.* Judgment was handed down on April 8, 1983 giving the orders which became the subject of the present appeal.

According to the statement supporting the Notice of Motion two main grounds were canvassed on behalf of the owners of the lands and these two grounds also became the basis of the judgment under appeal. The first ground was that the owners of the land were not given an opportunity to be heard during the enquiry before the Collector under section 10(1) of the Land Acquisition Act, 1960. More specifically this complaint came out in the statement as follows:–

(a) The Collector did not comply with the requirement of section 10(1) of the Land Acquisition Act;

(b) The Collector disregarded evidence adduced by the owners of the land;

(c) The Collector was wrong in disallowing counsel for the owners to submit on facts and law;

(d) The Collector erred in law in not acceding to the request of counsel to require the Government Valuation Officer to be present for cross-examination with regard to his report and further declined the request to supply a copy of the valuation report to the counsel.

(e) The Collector did not support his decision with reasons.

The second ground was that the delay of eight years between the publication of Gazette Notification 89 of March 30, 1972 and the making of the award by the Collector on February 7, 1980 was long, inordinate and grossly unreasonable.

The best way to examine the allegations in the first ground is to look at the note of the enquiry. This is contained in Exhibit KGP-3 at pages 101-107 of the record. It can be seen from the note of the enquiry that the first hearing was on March 22, 1979 which was postponed at the request of counsel for the owners of the lands to April 16, 1979. When the Collector sat on April 16, 1979, the enquiry was again postponed at the request of counsel to December 8, 1979. When the enquiry was finally commenced on December 8, 1979 out of nine registered owners of the lands in question only two appeared with their counsel although notices had been served. Counsel for the owners again asked for postponement until after December 13, 1979 for Civil Suits No. 360/79 and No. 589/78 to be heard first because he said they dealt with the same lands but this request was refused by the Collector. The enquiry proceeded and the first person to give evidence was the Settlement Officer of the district where the lands were situated. Then Khaw Poh Keat, joint owner of Lot 540 gave evidence in Bahasa Malaysia followed by Khaw Poh Kooi, the other owner present. The enquiry was adjourned to December 31, 1979 when apparently according to the note counsel again asked for postponement but was refused. Counsel also asked that the Government repre-

sentative be present at the enquiry but this request was rejected by the Collector. Counsel also asked that the Government Valuation Officer be present at the enquiry for cross-examination but this was also refused by the Collector. Finally on the same day counsel asked the enquiry to be adjourned to enable the Valuation Officer on behalf of the land owners to value the land as on July 30, 1972, the date when the land was gazetted under section 8 of the Land Acquisition Act. It appears on record that the Collector refused the adjournment on the grounds that the owners had been given sufficient time to make the valuation. Then the Valuer of the owners gave evidence in Bahasa Malaysia. At the end of his evidence he asked for a further period of one week to enable him to make the valuation of the land as on July 30, 1972 and his request was granted. The Valuer finally submitted his valuation on January 7, 1980. One month later the Collector handed down his award on February 7, 1980. That was in brief the sequence of events at the enquiry as it appears in the record of the proceeding before the Collector which started on March 22, 1979 ending on December 31, 1979 followed by submission of the valuation report of the Valuer of the owners on January 7, 1980 and the handing down of the Collector's award on February 7, 1980.

From the record of the enquiry before the Collector we would like to make some observations. It is clear from the record of the enquiry that at least for the major part of 1979 the owners of the land and their counsel are not entirely blameless on the question of delay. Secondly, nowhere in the record does it appear that the Collector disregarded any evidence adduced by or for the owners of the land. Thirdly, it is incorrect to say that the owners were denied the opportunity of being heard because both the co-owners who were present gave evidence while the rest were absent throughout the proceeding although served with the notices. Finally, it is also clear from the record of the enquiry that the Valuer of the owners of the lands gave evidence and later submitted his report on the valuation of the lands as on July 30, 1972 for consideration of the Collector. We would emphasise that it would be wrong to assume that the Collector did not consider the valuation report of the owners before handing down his award on February 7, 1980 which was one month after receiving the valuation report.

According to section 12(1) of the Land Acquisition Act the Collector shall make a *full enquiry* into the value of the scheduled lands and as soon as possible thereafter assess the amount of compensation which *in his opinion* is appropriate in each case. Counsel for the respondents urged the court to consider the effect of the words "full enquiry" alone which according to him necessarily imply that all rules of natural justice should be observed before the Collector makes the award. Looking at the specific complaints it seems clear to us that the gravamen of their complaint was their purported denial of the opportunity of being heard.

Although section 12 of the Act is entitled "Procedure at Enquiry" no detailed procedure is laid down in the section. Cases cited on behalf of the respondents in this appeal are not really helpful. These cases either dealt with provisions of law which lay down specific duties to be carried out before the authority makes an order as in the case of *Chief Building Surveyor* v. *Makhanlall & Co. Ltd.*[2] or where the Income Tax Officer made an assessment without reference to any evidence as in *D.C. Mills Ltd.* v. *Commissioner of Income Tax.*[3] The other cases cited dealt with dismissal from office.

It is fairly clear from the language of section 12 that the function of the Collector is not merely administrative but there is implied a proper exercise of discretion. It should be borne in mind however that an enquiry under section 12 is for the purpose of assessing the amount of compensation which in the opinion of the Collector would be appropriate in each case and towards this end he is required to make a full enquiry. Therefore the purpose of the enquiry is to satisfy the Collector on the question of the amount of compensation and it will only be in breach of the duty imposed on the Collector by this section if he deliberately ignores materials relevant to the assessment and the amount of compensation. That section does not require him to go beyond that duty.

The refusal by the Collector to the request of counsel for the owners to call the Government Valuer for cross-examination was also not in our opinion a violation of the owners' basic right and therefore not an infringement of natural justice in the circumstances of this case. It is clear from the note of the proceeding that the Government Valuer's report as well as the owners' own Valuer's report were before the Collector before he made the award. The Collector also heard the testimony of the owners' own Valuer before he made the award. Thus this case is clearly distinguishable from *Chanan Kaur & Ors.* v. *Chua Hup Lee & Ors.*[4] It was not an infringement of the basic

right of the owners for the Collector to refuse to hear submissions on law and facts by counsel in the circumstances of this case. Finally, so long as there is a written award in Form G referred to in section 14(1) of the Act there is no necessity for the Collector to give reasons for his award. Section 14(2) expressly states that an award prepared in Form G shall be final and conclusive evidence of area and value of the land in the opinion of the Collector.

Therefore we are unable to find any breach of the rules of natural justice in the enquiry before the Collector. We agree with the appellant that the allegation of the denial of natural justice before the Collector is without basis.

The appellant then raises the effect of section 68 of the Land Acquisition Act which the appellant contends amounts to a bar to any proceeding other than a reference to the High Court for the purpose of determining the market value of the land. This same question was answered briefly in *Ong Gaik Kee's* case which held that section 68 does not extend to include *certiorari.*

In the judgment of the High Court in this case the learned judge made two findings. First he ruled that there was certainly a denial of natural justice in the proceedings before the Collector. We do not agree with this finding. Secondly, the learned judge following the decision of this court in *Ong Gaik Kee's* case found that in the absence of reasonable explanation for the delay of eight years, the delay tantamounts to an abuse of power which renders the enquiry and all subsequent proceedings null and void. On the question of delay we do not see any reason to depart from the view held by this court in *Ong Gaik Kee's* case. In that case this court dealt firstly with the doctrine of exhaustion of an earlier declaration by a subsequent one and secondly the injustice caused to the land owner by the delay in holding the enquiry under section 10 of the Land Acquisition Act. On the question of delay the rationale of the doctrine applied by this court was that the longer the delay in making the award, the greater would be the injustice to the land owner. In that case there was a delay of seven years. In the present case the delay was eight years.

The object of the Notice of Motion was to challenge the Collector's award and since the learned judge found that there was unreasonable delay amounting to an abuse of power which renders the enquiry, the award and subsequent proceedings null and void he was in our view perfectly entitled and within his powers to order as he did that the award and subsequent proceedings be brought before him to be quashed. But the learned judge went further. He after being satisfied *inter alia* that the delay of eight years was unreasonable also ordered that GN 89 dated March 30, 1972 in respect of the lands and all subsequent proceedings be removed and be quashed. In addition there is also a direction by the learned judge to the Collector to deliver back possession of the lands that have been taken to the owners.

In short, the question raised in this appeal is the High Court's power to go into the validity of the whole acquisition proceeding, in particular the High Court's power to remove and quash GN 89 dated March 30, 1972. The Notice of Motion taken on April 23, 1980 was brought out to challenge specifically the "decision and award of compensation made by the Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang on February 7, 1980." It is quite apparent from the statement supporting the Notice of Motion that what the owners sought to challenge was the whole of the acquisition proceeding. It is also clear from the provisions of the Land Acquisition Act, 1960 that the various steps to be taken under the provisions of section 4 (Preliminary Notice and Form A), section 5 (Powers of Entry and Survey and Form B), section 7 (Preparation of Plan for the Whole Area of the Land and a List of the Land and Form C), section 8 (where the State authority decides that any lands referred to is required for public purpose and Form D) and proceedings under sections 9 and 10 for the hearing of claims to compensation and section 12 under which the actual enquiry with the Collector is held are all interconnected. All these provisions in the Land Acquisition Act form part and parcel of the acquisition proceeding. To borrow the words of the Indian judges the various provisions are "components of one integral whole" – *Radhey Sham* v. *State of Haryana.*[5] But the challenge of the owners of the land as expressed in the Notice of Motion and the grounds given in the statement are directed only to the enquiry and the award of the Collector. No challenge was made on any of the previous steps taken by the Collector under the Act and therefore they must be presumed to be in order and his powers properly exercised.

For these reasons we are of the view that the order of the learned judge to quash GN 89 dated

March 30, 1972 and the subsequent proceeding was made without jurisdiction and should be set aside.

Now on the question of the order of the High Court to the Collector to deliver possession of the lands. Section 29(1)(b) of the Government Proceedings Ordinance, 1956 reads as follows:—

"29(1) In any civil proceedings against the Government the court shall, subject to the provisions of this Ordinance, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:

Provided that –

(b) in any proceedings against the Government for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Government to the land or property or to the possession thereof."

Having regard to the express provision of section 29(1)(b) of the Government Proceedings Ordinance, 1956 can the court at all make an order of repossession of the lands against the Government?

In *Underhill & Another* v. *Ministry of Food*[6] the corresponding section in the Crown Proceedings Act, 1947 of the United Kingdom came to be examined. Romer J. said that it was quite plain that insofar as the motion was founded on a claim for injunction the court had no jurisdiction to entertain it by virtue of section 21(1)(a) of the Act. That case was brought by motion before the court asking for an injunction. In opening the case counsel for the plaintiffs said that he was going to ask for an alternative form of relief namely a declaration instead of an injunction in view of section 21 of the Crown Proceedings Act, 1947. Section 29(1)(a) was also examined in *Ramamoorthy* v. *Menteri Besar, Selangor & Anor.*[7] and Gill F.J. as then was, said that the provisions of section 29 are "sufficiently clear so as to leave no room for argument."

In our opinion the purpose of section 29 of the Government Proceedings Ordinance, 1956 is plain enough and that it enables the court to make declarations of the rights of parties where one of the parties is the Government. Our 1956 Ordinance followed closely the U.K. Crown Proceedings Act, 1947. It is in keeping with the spirit of the development of equity as stated by Farwell, L.J. in *Dyson* v. *Attorney-General*[8] at pg. 421.

"It has not, since the Commonwealth at any rate, been the practice of the Crown to attempt to defeat the rights of its subjects by virtue of the prerogative; in 1667 Baron Atkyns in *Pawlett* v. *Attorney-General* says: 'The party ought in this case to be relieved against the King; because the King is the fountain and head of justice and equity, and it shall not be presumed that he will be defective in either; it would derogate from the King's honour to imagine that what is equity against a common person should not be equity against him'."

But the special position of the Government is nevertheless maintained and the power of the court to grant relief against the Government is expressly restricted.

In the preliminary note of *Halsbury's* Statute Vol. 6 the following note explains the position of the Crown in all civil proceedings as provided by section 21 of the Crown Proceedings Act, 1947 of the United Kingdom which is in *pari materia* with section 29 of our Government Proceedings Ordinance, 1956:—

"No relief by way of injunction or order of specific performance may be given against the Crown or an officer of the Crown if the effect would be to bind the Crown, but instead an order declaratory of the rights of the parties must be made. No order may be made against the Crown for the recovery of land or the delivery of property, but instead any order must declare that as against the Crown the plaintiff is entitled to the land or property."

In *Dyson's case* Farwell L.J. in the course of his judgment said:

"In a case like the present the Attorney-General is properly made defendant. It has been settled law for centuries that in a case where the estate of the Crown is directly affected the only course of proceeding is by petition of right, because the court cannot make a direct order against the Crown to convey its estate without the permission of the Crown, but when the interests of the Crown are only indirectly affected the Courts of Equity, whether the Court of Chancery or the Exchequer on its equity side (see *Deare* v. *Attorney-General*) could and did make declarations and orders which did affect the rights of the Crown."

This judgment was before the passing of the Crown Proceedings Act, 1947 but although the Act gave the subject the right to proceed against the Crown as of right, the position of the Crown remains protected.

Section 29(1) of the Government Proceedings Ordinance deals with "any civil proceedings by or against the Government" and the proviso (b)

deals with any proceeding "against the Government for the recovery of land or other property". It is no answer in our view to say that the Notice of Motion which resulted in this appeal cannot be described as a civil proceeding against the Government for the recovery of land or other property. It does not follow that the provision of section 29(1)(b) of the Government Proceedings Ordinance is not applicable to this case because of the plain meaning of that section. In fact that argument would be favourable to the appellant having regard to the provisions of section 8(1) and (3) of the Specific Relief Act, 1950 which read as follows:–

"8. (1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, *by suit*, recover possession thereof, notwithstanding any other title that may be set up in the suit.

(3) No suit under this section shall be brought against any Government in Malaysia."

In the United Kingdom the words "civil proceedings" have been given a wide meaning. They refer to all proceedings for the enforcement or vindication or any right or the obtaining of any relief which might previously have been enforced or vindicated or obtained by the proceedings abolished by the Crown Proceedings Act, 1947. See *Halsbury's* Laws of England, Fourth Edition, Vol. 11 at pg. 752. As our law follows closely the U.K. Act, the same wide meaning should be given to the words "civil proceedings" in section 29 of our Government Proceedings Ordinance, 1956.

It is very clear from the language of section 29 that subject to two exceptions, the court may make any such order against the Government as it may make against a subject. First, an injunction or order for specific performance may not be granted against the Government, but the court may instead make an order declaratory of the rights of the parties. Secondly, an order for the recovery of land or the delivery of property may not be made against the Government, but in lieu thereof the court may make an order declaring the plaintiff to be entitled as against the Government to the land or the property or to the possession thereof.

Therefore the order of the learned judge directing the Collector to deliver possession of the land in question is contrary to the express provision of section 29(1)(b) of the Government Proceedings Ordinance, 1956.

To summarise, we agree with the appellant that there was no breach of rules of natural justice in the enquiry before the Collector. We also agree with the appellant that the order to quash GN 89 dated March 30, 1972 and the subsequent proceeding was made without jurisdiction and the order of repossession is contrary to section 29(1)(b) of the Government Proceedings Ordinance, 1956. We however disagree with the appellant that the delay of eight years from the date of Gazette Notification to the date of enquiry and award was not an abuse of power.

For the above reasons the appeal is dismissed but the order to quash G.N. 89 dated March 30, 1972 and the order of repossession be set aside. As the appellant has lost only on one ground there shall be no order on the cost of this appeal.

Appeal dismissed.

Solicitors: *Balwant Singh & Co.*

MULKH RAJ SHARMA v. SHANTI SROOP

[F.C. (Abdul Hamid, Mohamed Azmi & Hashim Yeop A. Sani F.JJ.) July 19 & September 10, 1983]

[Ipoh – Federal Court Civil Appeal No. 299 of 1982]

Practice and Procedure – Appeal from Magistrate – Question of fact – No reason to disturb finding of fact.

In this case the appellant claimed possession of premises of which he said he was the tenant and the respondent was a licensee. The respondent claimed in the defence that the appellant and the respondent were joint tenants. After hearing the parties the learned Magistrate held in favour of the appellant and gave him possession of the premises. On appeal the learned Judge reversed the decision of the Magistrate and held there was a joint tenancy. The appellant appealed to the Federal Court.

Held, allowing the appeal, there was no justification for the learned Judge to displace the Magistrate's finding on the facts and substitute his own.

Cases referred to:

(1) *In re the Estate of T.M.R.M. Vengadasalam Chettiar, Deceased* [1940] M.L.J. 155.
(2) *Chow Yee Wah & Anor.* v. *Choo Ah Pat* [1978] 2 M.L.J. 41.
(3) *Yahya bin Mohamad* v. *Chin Tuan Nam* [1975] 2 M.L.J. 117.